

Letter of Findings: 04-20120697
Sales Tax
For the Year 2011

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales Tax – Exemption.

Authority: IC § 6-2.5-2-1; IC § 6-8.1-5-4; IC § 6-2.5-5-39; IC § 6-2.5-8-8; [45 IAC 2.2-8-12](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Retail Merchant ("Retail Merchant") protests the imposition of sales tax on the sale of a recreational vehicle ("RV") to a non-resident customer who Retail Merchant argues took the RV out of state within 30 days therefore rendering the sale exempt from sales tax.

STATEMENT OF FACTS

Retail Merchant is a sole proprietor who owns and operates a used vehicle dealership in Indiana. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Retail Merchant for the years 2009 through 2011. During the course of the audit, the Department found that Retail Merchant had sold several vehicles without collecting sales tax and without retaining exemption certificates from the purchasers. The Department's audit therefore found these transactions to be subject to Indiana sales tax and assessed additional sales tax and interest for the periods at issue. Retail Merchant protested the inclusion of the sale of a single RV claiming that it was sold to a non-resident who took the RV out of state within 30 days and therefore the transaction was exempt.

An administrative hearing was held on Retail Merchant's protest and this Letter of Findings ensues. Additional information will be provided as necessary.

I. Sales Tax – Exemption.

DISCUSSION

The Department's audit proposed an adjustment to assess sales tax on the sale of an RV for which Retail Merchant did not have an exemption certificate.

As a threshold issue, although a statute that imposes a tax is strictly construed against the State, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-8.1-5-4(a) provides:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

In accordance with IC § 6-2.5-2-1(a), a sales tax, known as state gross retail tax, is imposed on Indiana retail transactions unless a valid exemption is applicable. IC § 6-2.5-2-1(b) states:

The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. (Emphasis added).

The relevant regulation is [45 IAC 2.2-8-12\(b\)](#) which states, "Retail merchants are required to collect sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used for an exempt purpose."

Therefore, Retail Merchant has a duty to collect and remit sales tax on its sales of tangible personal property. When Retail Merchant fails to collect and hold the taxes in trust for the state, Retail Merchant is personally liable for the sales tax, interest, and penalties due to the state for those sales.

[45 IAC 2.2-8-12\(d\)](#) cautions that, "Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof." Therefore, if the purchaser claims an exemption, the exemption certificate should be obtained at the time the transaction occurs otherwise the burden on Retail Merchant of proving the transaction was exempt becomes measurably more difficult.

Accordingly, it is Retail Merchant's responsibility to retain the documentation that supports the amounts it used to determine tax owed. During the audit of Retail Merchant's sales, it was determined that Retail Merchant

had not properly maintained exemption certificates. The Department's audit provided Retail Merchant with Form AD-14, a notice of non-compliance. The Department also provided Retail Merchant with several Forms AD-70, which are special exemption forms filled out by purchasers subsequent to the sales. Retail Merchant was able to have several AD-70s filled out by customers for certain sales and therefore, with exemption substantiated, those sales were removed from the audit assessment. The remaining sales that were not documented remained in the assessment, including the protested sale of the subject RV.

Retail Merchant claims that the RV was sold to a non-resident who took the RV out of Indiana within 30 days of the purchase of the RV. Retail Merchant is presumed to reference IC § 6-2.5-5-39. IC § 6-2.5-5-39 provides an exemption from sales tax for cargo trailers and recreational vehicles registered for use outside of Indiana. IC § 6-2.5-5-39 states in relevant part:

- (c) A transaction involving a cargo trailer or a recreational vehicle is exempt from the state gross retail tax if:
 - (1) the purchaser is a nonresident;
 - (2) upon receiving delivery of the cargo trailer or recreational vehicle, the person transports it within thirty (30) days to a destination outside Indiana;
 - (3) the cargo trailer or recreational vehicle will be titled or registered for use in another state or country;
 - (4) the cargo trailer or recreational vehicle will not be titled or registered for use in Indiana; and
 - (5) the cargo trailer or recreational vehicle will be titled or registered in a state or country that provides an exemption from sales, use, or similar taxes imposed on a cargo trailer or recreational vehicle that is purchased in that state or country by an Indiana resident and will be titled or registered in Indiana.

A transaction involving a cargo trailer or recreational vehicle that does not meet the requirements of subdivision (5) is not exempt from the state gross retail tax.

- (d) A purchaser must claim an exemption under this section by submitting to the retail merchant an affidavit stating the purchaser's intent to:

- (1) transport the cargo trailer or recreational vehicle to a destination outside Indiana within thirty (30) days after delivery; and
 - (2) title or register the cargo trailer or recreational vehicle for use in another state or country.

The department shall prescribe the form of the affidavit, which must include an affirmation by the purchaser under the penalties for perjury that the information contained in the affidavit is true. The affidavit must identify the state or country in which the cargo trailer or recreational vehicle will be titled or registered.

- (e) The department shall provide the information necessary to determine a purchaser's eligibility for an exemption claimed under this section to retail merchants in the business of selling cargo trailers or recreational vehicles.

After the audit, during the course of the protest, Retail Merchant presented a Form ST-137RV – "Affidavit of Exemption by a Nonresident on the Purchase of Recreational Vehicle/Cargo Trailer" – signed by both the purchaser and Retail Merchant as evidence that the sale of the RV was exempt from sales tax. Retail Merchant relies on this affidavit of exemption to relieve it of its duty to have collected and remitted sales tax on the sale of the RV at issue.

Pursuant to IC § 6-2.5-8-8:

- (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

- (b) The following are the only persons authorized to issue exemption certificates:

- (1) retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;
 - (2) organizations which are exempt from the state gross retail tax under [IC 6-2.5-5-21](#), [IC 6-2.5-5-25](#), or [IC 6-2.5-5-26](#) and which are registered with the department under this chapter; and
 - (3) other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

- (c) The department may also allow a person to issue a blanket exemption certificate to cover exempt purchases over a stated period of time. The department may impose conditions on the use of the blanket exemption certificate and restrictions on the kind or category of purchases that are exempt.

(Emphasis added).

The affidavit of exemption presented by Retail Merchant, previously unavailable during the audit, meets Retail Merchant's burden under IC § 6-8.1-5-1(c) and IC § 6-2.5-8-8(a). The sales tax assessed to Retail Merchant on the sale of the RV should be removed from the proposed assessment.

FINDING

Retail Merchant's protest of the assessment of sales tax on the sale of RV is sustained.

Posted: 04/24/2013 by Legislative Services Agency

